

BEFORE THE JUDICIAL QUALIFICATIONS COMMISSION
STATE OF FLORIDA

INQUIRY CONCERNING A JUDGE
NO. 02-466, JUDGE JOHN RENKE, III

SC03-1846

OBJECTION TO "SUBPOENA DUCES TECUM FOR DEPOSITION" AND MOTION
FOR PROTECTIVE ORDER AND MEMORANDUM OF LAW

Comes now John K. Renke II and for his objection, motion and memorandum he states as follows:

1. The Judicial Qualifications Commission for the State of Florida has issued a "Subpoena Duces Tecum for Deposition" directed to the undersigned non-party. Said subpoena was never served on me but was dropped off at my office when I was not present on May 4, 2005. Because the JQC failed to comply with Florida Statutes Section 48.031, the subpoena was never served on me. Before the subpoena was dropped off at my office on May 4, 2005, no other attempts were made to serve me with the subpoena at my place of business. Because the subpoena was never served on me, the subpoena did not compel me to produce any documents. Therefore, I object to the subpoena and I request a protective order pursuant to subsection (c) of Rule 1.280 (Fla.R.Civ.P.) which orders that the discovery of the documents not be had.

2. The "Subpoena Duces Tecum for Deposition" is defective and objectionable for a number of other reasons.

3. First, the "Subpoena Duces Tecum for Deposition" fails to give the undersigned the minimum of thirty days that he is entitled to before he can be compelled to produce documents or object to their production. A person cannot be compelled by subpoena to produce documents or items for inspection within less than

30 days after service. This is true even when the document production is sought in conjunction with a proposed deposition at the same time pursuant to the subpoena. *Ohio Casualty Insurance Company v. Jackman*, 621 So.2d 531 (Fla. 2d DCA 1993) at footnote 1. Therefore, the subpoena is defective due to its failure to give at least thirty days notice before the production of documents or objection to production is required. Therefore, the undersigned is entitled to a protective order pursuant to subsection (c) of Rule 1.280 (Fla.R.Civ.P.) which orders that the discovery of the documents not be had. Furthermore, even thirty days' notice is not enough time to gather the requested documents. (See *infra*.)

Furthermore, the subpoena is an overly broad, unduly burdensome fishing expedition that would never be upheld by any Florida court. Florida courts do not allow fishing expeditions disguised as discovery requests. *Walter v. Page*, 638 So. 2d 1030 (Fla. 2d DCA 1994). If the request for documents is overly broad (see *Walter v. Page*, *supra*) or unduly burdensome (see Rule 1.280 Fla. R. Civ. P.), then a protective order must be issued. *Id.* Therefore, the subpoena is defective and a protective order must be entered to order that the discovery not be had regarding my tax returns and regarding other items subpoenaed (see *infra*). (see Subsection (c) of Rule 1.280 Fla. R. Civ. P.).

4. The subpoena asks for all of my "Federal Income Tax Returns" and all schedules or attachments thereto for 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002. I do not have any such items for 1995, 1996, 1997 or 1998. I object to the production of all of the requested tax returns. My tax returns are protected from compelled disclosure by my right to privacy guaranteed by the Florida Constitution in

Article I, Section 23. See *Young v. Santos*, 611 So. 2d 586 (Fla. 4th DCA 1993) where the tax returns of a medical expert witness were sought:

Finally, with respect to the production of the petitioner's tax returns, we do not think that petitioner relinquished his right of privacy entirely by becoming a potential witness in this litigation. Tax returns contain a multitude of sensitive information regarding the filer, most of which has no relevance to the information which may [be admissible in the case]. We hold that appellant's overall income is not discoverable and would agree with the comments of the First District in *Woods* that the relevant information is the amount of income an expert receives from work as an expert consultant or witness. *Id.* 593 So. 2d at 1143. While in *Woods* the court approved an in camera inspection by the trial court of the witness' tax returns, the court found it necessary because the witness had ignored other less intrusive discovery. Here, no other means of providing the information had been explored either by respondent or by the trial court. Without considering less burdensome, less intrusive methods, the trial court departed from the essential requirements of law in ordering production of the tax returns of a nonparty.

(citations omitted) (emphasis added)

5. Clearly, the undersigned may not be compelled to disclose tax returns that contain a great deal of private, irrelevant information such as types and amounts of deductions, sources and amounts of my income and my spouse's income, my spouse's Social Security Number and my Social Security Number (see *Thomas v. Smith*, *infra* regarding the constitutional protection against compelled disclosure of Social Security Numbers). Obviously, there is a less burdensome way for the JQC to obtain evidence of the compensation that I paid to John K. Renke III during the years for which I still have records. I will produce the paychecks that I delivered to John K. Renke III for those years (i.e., 1999, 2000, 2001 and 2002) at the scheduled deposition on May 23, 2005. I believe that Judge Renke's attorney has previously provided the JQC with copies of IRS 1099 Forms that I issued to John K. Renke III for the years that I still had records, but I will also give such copies of 1099's to the counsel for the JQC at my deposition on May 23, 2005. I will also provide at that time copies of appropriately

redacted settlement statements for major cases that settled during 2002 as well as some time and billing records for these major cases. Provided, however, I do object to the overly burdensome request for time records contained in the subpoena (see *infra*.)

6a. Clearly, I am voluntarily providing the relevant information by “less burdensome, less intrusive methods” (*Young*, 611 So. 2d at 587) so that the JQC may discover the financial information it has sought in its subpoena where it requested my “Federal Income Tax Returns”. In fact, what I am providing cannot be found in my tax returns: the compensation paid to John K. Renke III is not specifically stated in any of my income tax returns (i.e.: his compensation is lumped in with the compensation paid to my other associates); amounts of income from specific settlements is lumped in with all of my other professional income and not stated separately in any of my tax returns.

b. The following italicized portion of the Amended Formal Charges states the issue that involves the compensation paid to John Renke III for working at my law office:

During the campaign in violation of Canon1, Canon 2A and Canon 7A(3)(a) and §§ 106.08(1)(a), 106.08(5) and 106.19(a) and (b), Florida Statutes, your campaign knowingly and purposefully accepted a series of “loans” totaling \$95,800 purportedly made by you to the campaign which were reported as such, but in fact *these monies, in whole or in substantial part, were not your own legitimately earned funds but were in truth contributions to your campaign from John Renke, II (or his law firm) far in excess of the \$500 per person limitation on such contributions imposed by controlling law.*

(italics added)

My tax returns show absolutely nothing relevant to that issue stated in the italicized portion of paragraph 9 of the Amended Formal Charges. Obviously, my tax returns could not possibly prove or disprove that “these monies”, in whole or in substantial part, were not John K. Renke III’s own legitimately earned funds or were contributions to his

campaign from me or my law firm. There is no place on an income tax return for that type of information.

c. What I am providing is all of the relevant documents that I have on the issue without giving up my constitutionally guaranteed right to privacy. See generally *Thomas v. Smith*, 882 So. 2d 1037 (Fla. 2d DCA 2004):

One of the principal concerns of the drafters of the amendment [to the Florida Constitution] that became article I section 23 was the right to informational privacy. [cite omitted] ... The right to privacy in the Florida Constitution 'ensures that individuals are able 'to determine for themselves when, how and to what extent information about them is communicated to others' *Shakman v. State*, 553 So.2d 148, 150 (Fla. 1989) (quoting A. Westin, *Privacy and Freedom* 7 (1967)). As the supreme court noted in **Rasmussen, 500 So. 2d at 536** (footnote omitted): **'Although the general concept of privacy encompasses an enormously broad and diverse field of personal action and belief, there can be no doubt that the Florida amendment was intended to protect the right to determine whether or not sensitive information about oneself will be disclosed to others.** Against this background, it seems obvious that private, sensitive, and confidential information regarding individuals is protected by the privacy clause in the Florida Constitution.
882 So. 2d at 1043, 1044

7. The Second DCA in *Thomas* went on to state that if a person has a legitimate expectation of privacy in the information at issue then the burden is on the State (i.e.: the JQC in the instant case).

to show that (a) there is a compelling state interest warranting the intrusion into the individual's privacy and (b) the intrusion is accomplished by the least intrusive means.
882 So. 2d at 1044 (emphasis added)

8. Clearly, the undersigned has a legitimate expectation of privacy in my federal income tax returns. See *Young v. Santos*, supra. Therefore, the burden is on the JQC to prove (1) that there is a compelling state interest warranting the intrusion into my privacy by compelling production of my income tax returns and (2) that such an intrusion is accomplished by the least intrusive means. Clearly, the JQC cannot meet this

burden: first, there does not appear to be any thing relevant in my tax returns; second counsel for the JQC cannot show that he has employed less intrusive means to gather whatever information he is looking for in my tax returns; and third, I am voluntarily providing the evidence of the compensation I paid to John K. Renke III for the years that I still have federal income tax returns.

9. I object to production of the items requested in requests numbered 2, 3, and 4 (i.e., all billing slips, time records or other recorded time or billing compilations for work performed by John Renke III, Thomas Gurrán, and John K. Renke II in 1995, 1996, 1997, 1998, 1999, 2000, 2001 and 2002.) First, I do not have any such records for files of matters that were closed during 1995, 1996, 1997 and 1998. Second, the requests are so unduly burdensome as to be oppressive: I have no central file from which the requested documents could easily and readily be retrieved, the requested documents are scattered throughout hundreds of files; I could not possibly retrieve all of the documents without expending great amounts of both time and money; I would have to close down my law office for weeks in order to retrieve all of the requested documents; I would lose income and possible clients if I were forced to close my law office in order to comply with the production request. Therefore, it is clear that the requests are so unduly burdensome and oppressive that the undersigned is entitled to a protective order pursuant to subsection (c) of Rule 1.280, Fla.R.Civ.P., ordering that the discovery of the documents not be had.

10. Regarding request number 5 in the list of requested documents in Exhibit A of the subpoena: I am unaware of having any such documents in my possession.

11. Regarding request number 6 in the list of requested documents in Exhibit A of the subpoena: the request is vague, ambiguous, and does not appear to request any relevant documents. Furthermore, I have no idea who were “the other Republican candidates for judge in the 2002 election”. As far as I know, judicial elections in Florida are non-partisan and that the Republican Party had no candidates running for judge in Florida in 2002. Therefore, I object to request for production number 6 and I request a protective order covering whatever counsel for the JQC is trying to discover thereby. The undersigned requests such a protective order pursuant to subsection (c) of Rule 1.280 Fla.R.Civ.P.

12. Attached hereto and made a part hereof is my affidavit.

13. The undersigned is an attorney and a member of the Florida Bar and is representing himself in this matter.

14. Rule 1.280 (c) Fla. R. Civ. P. incorporates Rule 1.380(a)(4) Fla. R. Civ. P. for the purpose of authorizing an award of attorneys fees and reasonable expenses to the person who has obtained a protective order. Those attorney’s fees and reasonable expenses shall be paid by the party whose conduct necessitated the motion for protective order or such party’s attorney who advised the party.

Wherefore, the undersigned requests that a protective order be entered ordering that the discovery requested in the aforementioned subpoena not be had. The undersigned further requests that an order be entered ordering the Judicial Qualifications Commission and/or its attorney to pay to the undersigned the reasonable expenses including attorney fees incurred by the undersigned in obtaining the protective order pursuant to Rules 1.280(c) and 1.380(a)(4), Fla. R. Civ. P.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the OBJECTION TO
“SUBPOENA DUCES TECUM FOR DEPOSITION” AND MOTION FOR PROTECTIVE
ORDER AND MEMORANDUM OF LAW has been sent by U.S. Mail to Marvin E.
Barkin, Esquire and Michael K. Green, Esquire, TRENAM, KEMKER,
SCHARF, BARKIN, FRYE, O’NEILL & MULLIS, P.A., 2700 Bank of
America Plaza, 101 East Kennedy Boulevard, P.O. Box 1102, Tampa, FL
33601-1102, Thomas C. MacDonald, Jr., Esquire, Florida Judicial
Qualifications Commission, 1904 Holly Lane Tampa, FL 33629, and Scott
K. Tozian, Esquire, Smith & Tozian, P.A., 109 North Brush Street, Suite
200, Tampa, FL 33602-4163 and by hand delivery to Michael K. Green,
Esquire this ____ day of May, 2005.

John K. Renke II